

For:

Introduction 4/1/19
Public Hearing N/A
Adoption _____

THE TOWN OF MOUNT AIRY, MARYLAND

ORDINANCE NO. 2019-4

**AN ORDINANCE TO AMEND PART I
OF THE CODE OF THE TOWN OF MOUNT AIRY
ENTITLED "ADMINISTRATIVE LEGISLATION",
CHAPTER 26 ENTITLED "PURCHASING", SECTION 26-1 ENTITLED
"DEFINITIONS", SECTION 26-2 ENTITLED "EMERGENCY PURCHASING",
SECTION 26-3 ENTITLED "PROCEDURE WHERE COST EXCEEDS \$30,000",
SECTION 26-4 ENTITLED "PROCEDURE WHERE COST EXCEEDS \$3,000 UP TO
AND INCLUDING \$30,000", SECTION 26-5 ENTITLED "PROCEDURE WHERE COST
IS \$3,000 OR LESS", AND SECTION 26-9 ENTITLED
"LOWEST RESPONSIBLE BIDDER"**

WHEREAS, the Town Council has determined that providing for some consideration in the award of contracts for goods and services to contractors or suppliers which have places of business within the Town limits, or places of business that are within the 21771 zip code for Mount Airy, is desirable and will promote and improve the local economy, and the development, enrichment, growth, expansion and the retention of the local business community, thereby keeping tax dollars spent on contracts in the area.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN
OF MOUNT AIRY:**

Section 1. That Part I, Chapter 26 to the Town Code, Sections 26-1 of the Code as follows:

§26-1. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings set forth in this section:

CAPITAL IMPROVEMENT - Any public improvement undertaken by the Town, including construction or reconstruction in whole or in part of any road, bridge, street, building or water, sewer or storm drain facility or any similar structure or facility necessary in carrying out the activities of the Town government.

CONTRACTUAL SERVICES - Includes all types of services required by the Town but not furnished by its own employees except professional services which are in their nature unusual and not subject to competition and shall not include capital improvements.

LOCAL BIDDER/CONTRACTOR/SUPPLIER – A contractor or supplier which has bid or quoted a price, or from which a bid or price quote is or may be solicited, for the supply of services or goods to the Town pursuant to a contract awarded pursuant to this Chapter which has a place of business within the Town limits, or within the 21771 zip code for Mount Airy.

LOWEST RESPONSIBLE BIDDER – The contractor or supplier that the Town Council or Purchasing Agent determines shall be awarded a contract for purchase of services or goods by the Town under this Chapter in consideration of the factors set forth in §26-9 below.

PURCHASING AGENT - The Mayor or such other person as may be designated as such in the Town Charter or by the Town Council.

SUPPLIES - Includes all commodities, materials, equipment and all other articles or things furnished to be used by any department or Town official or employee, except supplies of an unusual or noncompetitive nature which shall not be subject to competitive bidding.

Section 2. That Part I, Chapter 26 to the Town Code, Section 26-2 of the Code as follows:

§26-2. Emergency purchasing.

- A. An emergency for purposes of this eChapter, shall be deemed to exist when a breakdown in equipment, machinery and/or a threatened curtailment of essential services or a dangerous condition develops, or when any unforeseen circumstance arises causing curtailment or diminution of an essential service.
- A. In cases of emergency, the head of the appropriate department or the pPurchasing aAgent may purchase directly the required supplies or services. The department head or pPurchasing aAgent shall, however, whenever practicable, obtain three competitive telephone bids, including from at least one Local Bidder/Contractor/Supplier if one exists for the type of goods or services needed that is ready, willing and able to furnish a price quote and supply the goods or services within the time frame required, and order from the HLowest rResponsible bBidder. A written record shall be prepared as promptly as possible concerning the circumstances of the emergency and a tabulation of any bids and the amount expended and shall be presented to the Council at its next meeting. The submission of a bid or price quote shall not create a binding contract on the Town. No binding contract is created until the Purchasing Agent of the Town approves the purchase. Information contained in bids or price quotes shall not be considered proprietary.
- B. The pPurchasing aAgent shall endeavor to reduce emergency purchases to a minimum by use of service contracts or other arrangements for standby services.

Section 3. That Part I, Chapter 26 to the Town Code, Section 26-3 of the Code as follows:

§26-3. Procedure where cost exceeds \$30,000.

All ~~s~~Supplies, ~~e~~Contractual ~~s~~Services and ~~e~~Capital ~~i~~Improvements, where the estimated cost exceeds \$30,000 shall be purchased by formal written contract from the ~~H~~Lowest ~~R~~Responsible ~~B~~Bidder after public notice, as determined by the ~~p~~Purchasing ~~a~~Agent, inviting proposals. The following procedures shall be observed:

- A. The ~~p~~Purchasing ~~a~~Agent shall cause appropriate written specifications to be prepared.
- B. Advertisement to prospective bidders shall be given in at least one issue of a newspaper having general circulation in the Town at least 15 days before the date for the opening of bids. Such advertisement shall include a general description of the ~~s~~Supplies or ~~e~~Contractual ~~s~~Services involved or the ~~e~~Capital ~~i~~Improvement to be undertaken and shall state where bid forms and specifications may be obtained and state the place and time for opening bids.
- C. Each bidder shall accompany his bid with a statement under oath that he has not been a party with any other bidder to bid a fixed or uniform price. Failure to so provide such a statement shall invalidate the bid. Any bidder seeking to qualify for consideration as a Local Bidder/Contractor/Supplier shall so specify and provide a statement under oath listing any places of business qualifying the bidder/contractor/supplier for such status.
- D. Bids shall be opened publicly by the ~~p~~Purchasing ~~a~~Agent who shall present all bids to the Council at its next meeting. No bid may be withdrawn within 30 days of the bid opening.
- E. The Council, by motion, shall award the contract to the ~~H~~Lowest ~~R~~Responsible ~~B~~Bidder, except that the Council may reject all bids, parts of all bids or all bids for any one or more items included in the proposed contract whenever, in its judgment, the public interest will be served thereby.
- F. All contracts shall be signed on behalf of the Town by the Mayor. The submission of a bid shall not create a binding contract on the Town. No binding contract is created until the Town Council approves award of the bid and until the Mayor signs the contract. Information contained in bids shall not be considered proprietary.

Section 4. That Part I, Chapter 26 to the Town Code, Section 26-4 of the Code as follows:

§26-4. Procedure where cost exceeds \$3,000 up to and including \$30,000.

Where the estimated cost of a contract for ~~s~~Supplies, ~~e~~Contractual ~~s~~Services and ~~e~~Capital ~~i~~Improvements exceeds \$3,000 up to and including \$30,000, the following procedure applies:

- B. The ~~p~~Purchasing ~~a~~Agent shall cause appropriate written specifications, such as a list of items and/or services, to be prepared.

- C. The ~~p~~Purchasing ~~a~~Agent shall follow the procedures in § 26-3, or, alternatively, may solicit informal bids by personal contact and/or by telephone. When practical and when circumstances reasonably allow, considering general availability of the items or services being purchased, sources available for the purchases and past experience with the vendor or manufacturer, at least two, preferably three, bids shall be obtained, including from at least one Local Bidder/Contractor/Supplier if one exists for the type of goods or services needed that is ready, willing and able to furnish a price quote and supply the goods or services within the time frame required, in which case, so long as already budgeted by the Town Council, the ~~p~~Purchasing ~~a~~Agent may award the contract or reject bids as set forth in § 26-3. Nothing in the section shall be read to negate the need for purchases to be budgeted by the Town Council. Following any award, a written contract or purchase order shall be signed on behalf of the Town by the Mayor or designated ~~p~~Purchasing ~~a~~Agent. Bids may not be withdrawn within 30 days from the date of the bid. The submission of a bid or price quote shall not create a binding contract on the Town. No binding contract is created until the Purchasing Agent approves the purchase. Information contained in bids or price quotes shall not be considered proprietary.

Section 5. That Part I, Chapter 26 to the Town Code, Section 26-5 of the Code as follows:

§26-5. Procedure where cost is \$3,000 or less.

- D. When the cost of a contract for ~~s~~Supplies, ~~e~~Contractual ~~s~~Services and ~~e~~Capital ~~i~~Improvements is \$3,000 or less, the ~~p~~Purchasing ~~a~~Agent may ~~contract for the same~~ award the contract or reject bids as set forth in § 26-3 without Council approval. Whenever practical, the ~~p~~Purchasing ~~a~~Agent shall obtain telephone prices from at least two sources, including from at least one Local Bidder/Contractor/Supplier if one exists for the type of goods or services needed that is ready, willing and able to furnish a price quote and supply the goods or services within the time frame required. Nothing in the section shall be read to negate the need for purchases to be budgeted by the Town Council. A report of all such purchases shall be made to the Council at its next meeting. The submission of a bid or price quote shall not create a binding contract on the Town. No binding contract is created until the Purchasing Agent of the Town approves the purchase. Information contained in bids or price quotes shall not be considered proprietary.

Section 6. That Part I, Chapter 26 to the Town Code, Section 26-9 of the Code as follows:

§26-9. Lowest responsible bidder.

In determining the ~~H~~Lowest ~~R~~Responsible ~~B~~Bidder under §§ 26-2, 26-3, and 26-4 and 26-5, the Council or Purchasing Agent shall consider:

- A. The ability, capacity and skill of the bidder to perform the contract or provide the service required.

- B. Whether the bidder can perform the contract or provide the service promptly or within the time specified without delay or interference.
- C. The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- D. The quality of performance of previous contracts or services.
- E. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.
- F. Whether the bidder is in arrears to the Town on debt or contract or is a defaulter on surety to the Town or whether the bidder's Town taxes or assessments are delinquent.
- G. Whether the bidder qualifies as a Local Bidder/Contractor/Supplier whose bid is within 2%, but no more than \$50,000, above the lowest bidder.

~~G~~H. Such other information as may have a bearing on the decision to award the contract.

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that
this Ordinance shall take effect retroactively to the ____ day of _____, 2019.

Introduced this 1st day of April, 2019.

Enacted this ____ day of _____, 2019 by a vote of ____ in favor and ____ opposed.

ATTEST:

Jason Poirier, Secretary

Peter R. Helt, President of the Town Council

Approved this ____ day of _____, 2019.

ATTEST:

Jason Poirier, Secretary

Patrick T. Rockinberg, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.
This _____ day of _____, 2019.

Thomas V. McCarron, Town Attorney

B2137837